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10/056,262

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EXAMINER

JONES III, CLYDE H

ART UNIT

PAPER NUMBER

2623

MAIL DATE

DELIVERY MODE

02/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/056,262

Applicant(s)

SIROTA ET AL.

Examiner

Clyde H. Jones III

Art Unit

2623

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 11 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-55.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☒ Other: See Continuation Sheet.

Continuation of 13. Other: Regarding claim 7, the addition of "providing an advertisement publisher with a profile of the user of client system" changes the scope of claims 7-9 thus requiring further search and consideration.

Regarding claim 31, the addition of the limitation "provide an advertisement publisher with a profile of the user of client system" changes the scope of claims 31-33 thus requiring further search and consideration.

Regarding claim 50, the addition of the limitation "provide an advertisement publisher with a profile of the user of client system" changes the scope of claims 50-52 thus requiring further search and consideration.

Regarding claim 1 (and similarly claims 25 and 49) the applicant argues that Rand does not teach or suggest the limitation (which is undisclosed by the Blasko reference) providing an advertisement publisher with a profile of the user of client system [Remarks page 16, lines 22-29] and further that the motivation to combine the teaching of Blasko with the teachings of Rand is highly suspect [Remarks, page 17, lines 9-16]. The examiner respectfully disagrees.

In the base reference, Blasko teaches reporting the ads published (distributed) and played by the subscriber (viewing history) to the head end system so that advertisers will know that their ads were displayed [par. 54, 37]. Blasko further teaches it is desirable to provide ads to the subscriber based on the type of person watching the television [par. 56, lines 6-10] and that it is desirable to target subscribers with ads [par. 33, lines 10-14]. Blasko even further teaches it is desirable for the head end system to prepare the ad schedule in advanced based on the characteristics of the subscriber [par. 49, lines 1-3, 8-11]. Lastly Blasko teaches a subscriber profiling function 322-fig. 2 in connection with the ad scheduling 312 and insertion 304 system that monitors the user's interaction (click stream).

Even though Blasko teaches in an advertisement insertion system (par. 29, lines 1-5; par. 31-32) it is desirable to prepare ad schedules based subscriber characteristics, to profile the user, and to report the actions, i.e., ads played by the subscriber, to the head end advertising/publishing system as discussed above, Blasko fails to teach providing the advertisement publisher with a profile of the user of the client system. In other words Blasko fails to teach sending the subscriber's profile to the advertisement publisher (advertisement distributor), i.e., the head end system.

However, in an analogous art, Rand teaches it is desirable for the subscriber (user of the client system) to provide a profile to the service provider (head end) (par. 20, lines 1-12; in which the subscriber communicates to the provider preferences and viewing history [par. 20, 1-5, 8-12] available to the provider for preparing the ad schedule in advance based on the characteristics of the user) for targeted insertion of content into the data stream based on the profile (par. 11; par. 22, lines 1, 6-8, 14-17; par. 23, lines 1-3, 7-10).

Therefore it would have been obvious, desirable, and well known in the art to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Blasko to include providing the advertisement publisher with a profile of the user of client system as taught by Rand for the advantage of better optimizing customization of content the subscriber views (Rand-par. 21, lines 11-14). In other words it is obvious to modify Blasko's system to provide a system in which the viewer profile includes data such as demographics, age, sex, viewing history and content preferences and is provided to the advertisement distributor/publisher, i.e., the headend, as taught by Rand in order to update or add viewer profiles, e.g., when a user's content preferences change or when new or multiple users use the system, making the system more adaptable and user friendly. The applicant's arguments are not persuasive.

The applicant even further argues that the examiner has erroneously concluded that Blasko teaches using a user profile because Blasko includes demographic information referring to geographic information about the location of the STB which reveals nothing about a profile of the user [Remarks, page 17, line 29-page 18, line 10]. The examiner respectfully disagrees because Blasko teaches profiling includes monitoring the user click stream/interaction and viewing history (fig. 2 -item 322). Furthermore the applicant's argument is irrelevant to the claim as all that is required to meet the limitation is providing an advertisement publisher with a profile of the user of client system, however there is nothing that prevents the profile from including demographic, geographic or any other type of information as long as it reveals information about the user, including the location of the user. Lastly it is obvious for the profile to include other information about the user as discussed in the combination of Blasko in Rand above. The applicant's arguments are not persuasive.

Additionally, the applicant argues that in the Rand reference the subscriber preference data is stored in a metadata module which is separate and distinct from the provider network and therefore cannot be capable of providing an advertisement publisher with a profile of the user of the client system as recited in claim 1 [Remarks - page 18, lines 17-25]. The examiner respectfully disagrees because the meta data module 135 of the service provider and the advertisers 170 form an interconnected service provider system. Secondly, there is nothing in the claim language that prohibits this interpretation. Lastly the location of the advertisers is irrelevant to the claim language and the combination of the Blasko and Rand references, i.e., the examiner is modify the Blasko system to include Rand's teaching of providing the client user profile to the service provider system which comprises an advertisement publishing/distribution system. The location of the actual advertisement creators and their system and how the advertisement creators communicate to the distribution system is irrelevant to the claim language. The applicant's arguments are nonpersuasive.

Further regarding claim 1 the applicant argues that it is overly broad and conclusive to interpret Rand shows providing an advertisement publisher with a profile of the user client system and that Rand teaches away from Blasko because there is no need for seeking duplicative profile information [Remarks - page 19, lines 10-19].

The examiner respectfully disagrees because Rand teaches providing the advertisement publisher with a user client profile as discussed above and there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to combine or modify Blasko's teachings to include Rand's teachings also discussed above. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Regarding Rand teaching away there is nothing in the disclosure of Rand or Blasko that criticizes, discredits, or otherwise discourages the combination. See, *In re Fulton*, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004). The applicant's arguments are not persuasive.



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